

The Department's regulation "Persons Who Repair or Otherwise Service Tangible Personal Property" at 86 Ill. Adm. Code 130.2015 provides guidance for when such persons incur Retailers' Occupation Tax liability or Service Occupation Tax liability. (This is a GIL.)

December 11, 2006

Dear Xxxxx:

This letter is in response to your letter received in the Legal Services Office on August 22, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

In order to be compliant with current sales tax laws I would like to know the following.

What is taxable: We do service calls and sell parts, the labor, handling, freight in, freight out and truck fees are listed separately on our invoices. Which items should we charge sales tax on?

Is the sales tax based on the Point of Sale or the Point of delivery?

Out of state customer drop ship [sic], if our customer is not located in your state but has us do a drop ship to one of their customers who is located in the state. Can we accept resale exemption from our customer's home state, or do they need to have exemption number from your state?

Can we accept a multi-state [sic] exemption form or does your state require a form that is specific to your state?

Your assistance in answering these questions will allow us to be compliant with your states [sic] tax law. Response may be sent by fax.

Thank you for your assistance.

DEPARTMENT'S RESPONSE

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. See 86 Ill. Adm. Code 150.101. If no tangible personal property is being transferred to the customers, then no Illinois Retailers' Occupation Tax or Use Tax would apply.

Likewise, the Service Occupation Tax Act and Service Use Tax are imposed on the transfer of tangible personal property incident to sales of service. See 86 Ill. Adm. Code 140.101 and 160.101. If no tangible personal property is being transferred to the customers incident to the services provided, then no Illinois Service Occupation Tax nor Service Use Tax would apply.

We refer you to the Department's rules and letters that are available on the Department's web site. There are rules that cover many of the topics you mention.

The Department's regulation "Persons Who Repair or Otherwise Service Tangible Personal Property" at 86 Ill. Adm. Code 130.2015 should help you determine which type of sales tax applies to the sales you make. Other useful regulations include 86 Ill. Adm. Code 130.225 "Drop Shipments," 86 Ill. Adm. Code 130.410 "Cost of Doing Business Not Deductible," 86 Ill. Adm. Code 130.415 "Transportation and Delivery Charges," and 86 Ill. Adm. Code 130.1405 "Seller's Responsibility to Obtain Certificates of Resale and Requirements for Certificates of Resale."

For guidance concerning jurisdictional questions, we suggest you review the Department's regulation at 86 Ill. Adm. Code 270.115. In general, the imposition of the various sales tax related local taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. 86 Ill. Adm. Code 270.115.

The tax rate is fixed by the location of the seller, not the delivery location. The fact that the item being sold is shipped from out-of-State or from another Illinois location is immaterial for purposes of local taxes if the sale occurs through order acceptance in an Illinois jurisdiction imposing a local tax. For these transactions the local tax will be incurred. Although 86 Ill. Adm. Code 270.115 deals with the municipal Home-Rule taxes, the principles outlined in this regulation apply to all local taxes administered by the Department.

If a purchase order is accepted outside the State, but the property being sold is located in an Illinois jurisdiction that has imposed a local tax (see, for example, Section 270.115(b)(3)), then the location of the property at the time of sale will determine where the seller is engaged in business for the purpose of determining the imposition of applicable local sales taxes. If purchase order acceptance occurs outside of Illinois and the "lessor" under a conditional sale maintains no inventory in the State, then the tax rate is 6.25%.

If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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